



2025:DHC:5089-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 18.03.2025
Pronounced on: 01.07.2025

+ **W.P.(C) 12501/2024, CM APPL. 51942/2024**

UNION OF INDIA & ORS.

.....Petitioners

Through : Mr. Jitesh Vikram
Srivastava, SPC. Gp Capt
V Sridhar, Sgt. Manish
Kumar Singh, Sgt.
Mritunjay & Sgt. Pankaj
Sharma, Air Force Legal
Cell, DAV

versus

EX SGT RAJ KISHOR MISHRA (RETD)Respondent

Through : Mr. H.S. Tiwari & Mr.
S.S. Pandey, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present Writ Petition has been filed by the petitioners, under Article 226 of the Constitution of India, seeking the following relief:

“a. Issue a Writ or Order or direction in the nature of Certiorari, setting aside the Order dated 06.10.2023 passed by the Ld.



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*Armed Forces Tribunal, Principal Bench,
New Delhi in Original Application No.
1104 of 2017 titled "Ex Sgt Raj Kishor
Mishra vs Union of India & Ors."*

2. *Vide* the Order dated 06.10.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (hereinafter referred to as the, 'Tribunal') in Original Application (hereinafter referred to as the, 'O.A.') No. 1104 of 2017, titled ***Ex Sgt Raj Kishor Mishra v. Union of India and Others***, the learned Tribunal held that the respondent is entitled to the disability element of pension at the rate of 30% for life for Anterior Cruciate Ligament Tear Left Knee (Old), rounded off to 50% for life.

3. The brief facts of the present case are that the respondent was enrolled in the Indian Air Force on 20.05.1996 and was discharged from service on 31.05.2016 upon fulfilling the conditions of his enrollment rendering 20 years and 12 days of regular service. At the time of his discharge, the respondent was subjected to a Release Medical Board (RMB) dated 20.08.2015. The said Board assessed the disability, namely, Anterior Cruciate Ligament Tear Left Knee (Old) at 30% for life. However, the claim for the grant of disability pension was rejected by the petitioners, *vide* letter dated 08.03.2016, on the ground that though the disability was attributable to service, as the respondent was not willing for undergoing surgery and surgery would have improved the disability from the present condition, therefore, as



per Para 3(b)(i) of the GMO Mil Pension 2002, he was not entitled to the grant of the disability pension.

4. Being aggrieved by the rejection of his claim, the respondent filed the O.A. before the learned Tribunal, seeking grant of disability pension. The learned Tribunal allowed the said O.A. and directed the petitioners herein to extend the benefit of disability pension to the respondent in respect of the aforesaid disability.

5. Dissatisfied with the Impugned Order passed by the learned Tribunal, the petitioners have invoked the writ jurisdiction of this Court.

6. The learned counsel for the petitioners submits that the learned Tribunal has erred in allowing the O.A. filed by the respondent, merely by placing reliance on the Judgment of the Supreme Court in *Dharamvir Singh v. Union of India*, (2013) 7 SCC 316, without appreciating that the respondent had refused to undergo a surgery which could have reduced the extent of his disability to below 20%, which is the threshold limit for the grant of the disability pension.

7. On the other hand, the learned counsel for the respondent submits that the learned Tribunal rightly, placing reliance on the Para 5(g) of Part V of the RMB, has held that the improvement in the condition of the respondent post the surgery was uncertain and therefore, the reduction of the percentage of the disability was not proper.

8. We have considered the submissions made by the learned counsels for the parties and perused the record.



9. At the outset, it would be appropriate to note that there is no dispute that there is no dispute that the injury/disability suffered by the respondent was attributable to the service. There is also no dispute that the same was assessed by the RMB as 30%.

10. The only dispute between the parties is whether the percentage of the disability was rightly reduced by the RMB only on the ground that the respondent had refused to undergo the surgery/treatment recommended, thereby disentitling him to the grant of the disability pension.

11. The learned Tribunal, however, while allowing the abovesaid O.A., held as under:

*"13. Now, the question which is to be answered remains is about the reduction of percentage of disability of the injury by the respondents. The respondents vide their counter affidavit stated that the disability qualifying element for the disability pension was held to be Nil due to the reason that the applicant rendered unwillingness for the surgery which would have improved the condition of the applicant. The respondents placed reliance on Para 5 (f) of the RMB dated 20.08.2015 wherein the medical board opined the probable percentage to which the disablement could be reduced by operation/treatment was 20%-30%. **Para 5 (g) of Part V of the RMB wherein it was specifically asked. "Do the medical board consider individual refusal to submit to operation/treatment I / reasonable? Give reason in support of the opinion specifying the operation/ treatment recommended "** and it was stated **"YES, (age factors and uncertain for improvement)"**. It is safe to say that medical science has not developed to an extent that it can state with certainty any conclusive assessment for recovery of the disability, it thus, cannot be said that improvement in the condition is certain and from bare perusal of Para 5 (g) of Part V of*



the RMB, the respondents have admitted that the improvement for the said disability is uncertain. Therefore, the reduction in the percentage of the disability by the respondents is not proper.
.....”

(emphasis supplied)

12. In our considered view and as held by the learned Tribunal as well, once the Medical Board specifically considered the respondent’s refusal to undergo the recommended surgery/operation/treatment to be reasonable and justified, citing age- related factors and the uncertainty of improvement, the percentage of the disability could not have been arbitrarily reduced by the RMB. The reduction was, therefore, completely arbitrary and without any basis and the respondent was rightly held entitled to the grant of the disability pension.

13. Though the Courts are generally reluctant to interfere with the opinion of the medical Boards, however, where it is found that the opinion is not based on any medical diagnosis, but on hypothesis and conjectures and on contradictory opinion of the Medical Board itself, the Courts would be fully justified in setting aside such opinion. Present was once such case. Once the Medical Board had itself opined that the respondent’s refusal to submit to operation was reasonable, there was no occasion for the Medical Board to then reduce the percentage of his disability only because it was “probable” that such operation would have reduced the percentage of disablement.

14. Accordingly, we find no merit in the present petition. The same is dismissed. The petitioners shall pay costs of Rs. 15,000/- to the



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respondent. The pending application also stands disposed of as being rendered infructuous.

SHALINDER KAUR, J

NAVIN CHAWLA, J

JULY 01, 2025/SK

Click here to check corrigendum, if any